

The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

LAWRENCE HARTFORD, DOUGLAS  
MITCHELL; BRETT BASS; SPORTING  
SYSTEMS VANCOUVER, INC.; SECOND  
AMENDMENT FOUNDATION, INC.; AND  
FIREARMS POLICY COALITION, INC.,  
Plaintiffs,

vs.

BOB FERGUSON, in his official capacity as  
Washington State Attorney General; et al.  
Defendants.

NO. 3:23-cv-05364-RJB

DEFENDANTS JASON CUMMINGS  
AND ADAM FORTNEY’S RESPONSE  
TO PLAINTIFFS’ MOTION FOR  
PRELIMINARY INJUNCTION

**RESPONSE**

This case presents the issue of whether Substitute House Bill 1240 (“SHB 1240”) is constitutional. Snohomish County Sheriff Adam Fortney and Snohomish County Prosecuting Attorney Jason Cummings (“Snohomish County Defendants”) have been named as Defendants in their official capacities because their respective offices possess the legal authority to enforce the criminal laws of Washington State and/or prosecute violations of those criminal laws. *See* RCW 36.28.010 and RCW 36.27.020; Dkt. 1, ¶¶21, 25. Snohomish County Defendants do not

DEFENDANTS CUMMINGS AND FORTNEY’S  
RESPONSE TO PLAINTIFFS’ MOTION FOR  
PRELIMINARY INJUNCTION - 1  
(USDC 3:23-cv-05364-RJB)

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1 take a position on whether SHB 1240 is constitutional.<sup>1</sup> However, to the extent relevant to the  
 2 Court's consideration of Plaintiffs' Motion for Preliminary Injunction, Snohomish County  
 3 Defendants supply the Court with the following facts and law.

4 In Washington, the offices of sheriffs and prosecuting attorneys are constitutional offices  
 5 created by Article 11, § 5 of the Washington State Constitution (Amendment 12). Sheriffs' duties,  
 6 including exercising law enforcement responsibilities, are outlined in RCW 36.28.010, while  
 7 prosecuting attorneys' duties, including prosecuting violations of the law, are outlined in RCW  
 8 36.27.020. Sheriffs have discretion to determine how to prioritize and execute law enforcement  
 9 functions and goals, while prosecuting attorneys have charging discretion. *See, e.g., Donaldson*  
 10 *v. City of Seattle*, 65 Wn. App. 661, 672 (1992) ("Law enforcement must be vested with broad  
 11 discretion to allocate limited resources among the competing demands."); *State v. Rice*, 174  
 12 Wn.2d 884, 901-904 (2012) ("a prosecutor's broad charging discretion is part of the inherent  
 13 authority granted to prosecuting attorneys as executive officers under the Washington State  
 14 Constitution.").

15 Plaintiff Brett Bass appears to be the only individual Plaintiff who resides in Snohomish  
 16 County. *See* Dkt. 1, ¶¶10-12. Although Plaintiffs Second Amendment Foundation and Firearms  
 17 Policy Coalition, Inc. allege they are bringing this action on behalf of their members who reside  
 18 in the State of Washington, besides Plaintiff Bass, there are no allegations that any of these  
 19 members reside in or otherwise have ties to Snohomish County. *See Id.*, ¶¶13-15. Additionally,  
 20 Plaintiff Brett Bass has not alleged that Snohomish County Defendants have taken any steps to  
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26 <sup>1</sup> Snohomish County Defendants are named solely in their official capacities. Dkt. 1, ¶¶21, 25.  
 27 Individual personal opinions about SHB 1240 are immaterial to this litigation.

investigate or prosecute him and/or taken any steps to cause him to fear investigation or prosecution. Nor has he alleged any facts that would suggest he intends on engaging in any course of conduct in Snohomish County that would arguably violate SHB 1240.<sup>2</sup> *Id.*, ¶12.

Snohomish County Defendants defer to this Court regarding the constitutional issues presented in this case. Should the Court determine that SHB 1240 is constitutional, the Snohomish County Sheriff and Prosecuting Attorney maintain the discretionary authority to enforce the law and/or prosecute violations of law in Snohomish County.<sup>3</sup>

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<sup>2</sup> Plaintiffs, individual and organizational, therefore lack standing to assert any claim against Snohomish County Defendants. *See, e.g., Thomas v. Anchorage Equal Rights Comm’n*, 220 F.3d 1134, 1139 (9th Cir. 2000); *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009). Additionally, Plaintiffs have failed to state a §1983 claim against Snohomish County Defendants as they have failed to adequately plead the elements for municipal liability. *See, e.g., Fed. R. Civ. P. 12(b)(6), Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658 (1978).

<sup>3</sup> To the extent the Court considers Plaintiffs’ alternative request for summary judgment, Dkt. 10, p. 15, Snohomish County Defendants oppose such a request as to Plaintiffs’ §1983 claims as Plaintiffs have failed to adequately plead any such claims. *See supra* n.1.

1 I certify that this memorandum contains 579 words, in compliance with the Local Civil  
2 Rules.

3  
4 DATED this 22<sup>nd</sup> day of May, 2023.

5 JASON J. CUMMINGS  
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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the Civil Division of the Snohomish County Prosecuting Attorney, and that on May 22, 2023, I caused to be served a true and correct copy of the foregoing document upon the parties listed by the method(s) indicated:

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I declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

DATED this 22<sup>nd</sup> day of May, 2023.

s/Nikki Michel  
 Nikki Michel, Legal Assistant